

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 4:12CR3078
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
ALLEN E. OVERHOLTZER,)	
)	
Defendant.)	

The Court has received the 2nd Revised Presentence Investigation Report and Addendum ("PSR"), and the Defendant's Sentencing Statement (Filing No. 31). The government has no objections to the PSR. (Filing No. 29.) The Defendant has filed a Variance Motion, and an accompanying brief and evidentiary index (Filing Nos. 30, 32 and 34). See Order on Sentencing Schedule, ¶ 6.

Although the Defendant states in the Sentencing Statement that he objects to "any conclusion that he is a third party risk to children," the PSR mere notes that he "may" pose such a risk. Such a statement by the probation officer is not inappropriate, and has no affect on the guidelines. The Defendant's objection to paragraph 11 of the PSR will be denied. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Accordingly,

IT IS ORDERED:

1. The Defendant's objection to paragraph 11 in PSR is denied;
2. The Court intends to adopt the PSR;

3. The Court will address the Defendant's and Motion for Variance (Filing No. 30) at the sentencing hearing;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, these tentative findings are final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11th day of February, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge